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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,668	05/09/2006	Ivan Sabesky	85150-202 RWD	2779

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EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT	PAPER NUMBER
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3771

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09/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,668	Applicant(s) SABESKY ET AL.	
	Examiner CHRISTOPHER BLIZZARD	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/26/09.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8,10-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,10-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Translation of DD132848</u> |

DETAILED ACTION

1. This office action is in response to amendment filed 5/9/2006. As directed claims 1, 3-6, 8, 10, 11, 14, and 20 were amended, claims 2, 7, 9 and 16 were cancelled and no claims were added. This application currently has claims 1, 3-6, 8, 10-15, and 17-20 pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-6, 8, 10, and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schontube (DD 132,848).

4. Regarding claim 1, Schontube discloses a ventilation system comprising; an envelope comprising an outer shell with surround a hollow interior which includes a central portion which is size to support a head of a patient (page 4, lines 6-12); two breathable surface portions located in the outer shell along opposite side edges of the envelope (fig. 1) such that a central portion spans between the them and the head of the patient would be between them (fig. 1), the breathable surface portions configured to pass gas from surrounding area of the envelope into the hollow interior of the envelope (page 4, lines 9-12); a suction port coupled to the envelope in communication with the hollow interior of the envelope and a suction unit(page 5, lines 3-6); a channel formed in the hollow interior of the envelope which is generally U-shaped about the

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central portion (fig. 1) and is made of two side portions each connected to a base portion (fig. 1); and the outer shell being made of a material impermeable to gas (page 4, line 14), but does not disclose the suction port being centered between the opposite sides of the envelope or that the out shell is only open at the breathable surface portions arranged to extend along opposite sides of the face of the patient. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the suction port being centered between the opposite sides and to have the breathable surfaces only on either side of the shell, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

5. Regarding claim 3, Schontube discloses each breathable surface portion is elongate and parallel in the longitudinal direction as the other breathable surface (fig. 1).

6. Regarding claim 4, Schontube discloses the breathable surface portions are raised in relation to the central portion (fig. 1) but the does not disclose the central portion being made of a flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the central portion out of a flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Regarding claims 5, 6, 10, 12 and 14, Schontube discloses the claimed invention wherein the side walls act as a support structure supporting the breathable surfaces and

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central portion, located on the upper side of the envelope, and raise the breathable surfaces above the bottom side of the envelope (page 4, lines 14-20) (fig. 1).

8. Regarding claims 17 and 18, Schotube discloses the claimed invention but does not disclose the support structure, including the side walls, being formed of a stiff material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the support structure being of a stiff material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

9. Regarding claims 8, 13, 15 and 19, Schotube discloses the claimed invention but does not disclose the envelope; including the outer shell, breathable surface portions and central portion; being formed of a pliable and flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make any or all parts of the envelope of a pliable and flexible material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

10. Regarding claim 20, Schotube discloses the claimed invention wherein the breathable surface portions are located adjacent each of the upright side walls (fig. 1).

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schontube (DD 132,848) as applied to claim 1 above, and further in view of Martz (1,696,775).

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12. Regarding claim 11, Schontube discloses the claimed invention except for a selectively separable cover on the upper side of the envelope. Martz teaches a selectively separable cover for headrest used in medical procedure (page 1, lines 6-14). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the invention of Schontube with a cover as taught by Martz in order to provide the advantage of a way to sanitarily use the device with multiple patients.

Response to Arguments

13. Applicant's arguments with respect to claims 1, 3-6, 8, 10-15, and 17-20 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments concerning Schontube (DD 132,848) have been fully considered but they are not persuasive. Schontube discloses a scavenging system with an outer shell being open on opposing sides of a patient's face as well as a generally U-shaped channel in the hollow interior of the shell (page 4, lines 9-12) (fig. 1). Further, Applicant's arguments concerning the location of the suction port is not persuasive as a mere relocation of the port by one of ordinary skill in the art would produce the claimed limitation.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is (571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/CHRISTOPHER BLIZZARD/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771